

REMARKS

Interview

Applicants would like to thank Examiner Chandrakumar for telephoning Applicants' representative on January 15, 2009, to discuss claim amendments. During the phone conference, the Examiner Chandrakumar suggested amendments to the claims to place the application in condition for allowance. Applicants have incorporated a number of the suggested amendments in the present amendment.

Status of the Claims

Claims 1, 3-5, 9, 11, and 21 are currently pending. Claims 2, 6-8, 10, and 12-20 have been canceled without prejudice or disclaimer of the subject matter claimed therein. Claims 11 and 21 are withdrawn from consideration as being directed to a separate invention. Claims 1, 3-5, 9, and 14 are currently under examination.

Applicants assume that the response submitted on January 6, 2009, has been entered. Accordingly, the present listing of claims incorporates the amendments submitted on January 6, 2009, and includes the additional amendments indicated in the listing of claims submitted herewith.

Claims 1 and 9 have been amended, and claim 21 has been added as a new claim. The amendments to the claims and the addition of new claim 21 do not include prohibited new matter. Support for the amendments to the claims and the addition of new claim 21 can be found throughout the specification and claims as originally filed. Representative support for new claim 21 can be found in claim 19 as originally filed.

Applicants reserve the right to file divisional and/or continuation applications to pursue the subject matter deleted from the claims as originally filed.

Double Patenting

Claims 1, 3-7, 9, and 14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of copending Applications 11/569,150; 11/569,148; 11/569,408; 11/569,208; 10/506,020; and 10/536,687.

Without acquiescing to the propriety of the provisional obviousness type double patenting rejection, Applicants respectfully point out that this is a provisional rejection between copending applications. MPEP 804 (I)(B)(1) (page 800-17) states,

If the “provisional” nonstatutory obviousness-type double patenting rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

Accordingly, Applicants respectfully submit that a terminal disclaimer need not be submitted over Applications 11/569,150 (effective filing date May 24, 2005), 11/569,148 (effective filing date May 24, 2005), 11/569,408 (effective filing date May 24, 2005), and 11/569,208 (effective filing date May 24, 2005), because these applications were filed after the effective filing date of the present application which is November 24, 2003. Thus, since this is the remaining rejection in the present application, Applicants respectfully request withdrawal of this rejection over Applications 11/569,150; 11/569,148; 11/569,408; and 11/569,208 in accordance with MPEP 804 (I)(B)(1).

With regards to Application 10/536,687 ('687), Applicants respectfully submit that the pending claims are patentably distinct from those of Application '687, which has been recently allowed. The claims of the present application are directed to compounds comprising an isoxazoline substituted pyridyl phenyl group attached to the oxazolidinone ring. The claims of '687 are directed to patentably distinct compounds because Ring C of Formula (I) in '687 does not encompass isoxazoline substituted pyridyl phenyl group. The substituent R⁴ on the pyridyl ring in '687 cannot be isoxazoline because isoxazoline is not included within the definition of HET-3. Accordingly, the instant pending claims are patentably distinguishable from the claims of the '687 application. Applicants respectfully request withdrawal of the double patenting rejection over the '687 application.

Applicants respectfully submit that the pending claims are patentably distinct from those of U.S. Patent Application No. 10/506,020 ('020), now U.S. Patent 7,473,699. The claims of the present application are directed to compounds comprising an isoxazoline substituted pyridyl phenyl group attached to the oxazolidinone ring. The claims of '020 are directed to patentably distinct compounds because the substituents attached to the oxalidinone ring at the “Q” position

do not include substituted pyridyl phenyl. Specifically, the substituents at the "T" position on the substituted phenyl attached to the oxalidinone ring do not include pyridyl. Accordingly, the instant pending claims are patentably distinct from those of the '699 patent. Applicants respectfully request withdrawal of the double patenting rejection over the '699 patent.

Conclusion

The foregoing amendments and remarks are being made to place the application in condition for allowance. Applicants respectfully request entry of the amendments, reconsideration, and the timely allowance of the pending claims. A favorable action is awaited. Should an interview be helpful to further prosecution of this application, the Examiner is invited to telephone the undersigned.

If there are any additional fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. §1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Dated: **February 27, 2009**
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Respectfully submitted,
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